UNITED
NATIONS

HRI

International
Human Rights
Instruments

Distr.
GENERAL

HRI/CORE/1/Add.21/Rev.1
25 February 1999

ENGLISH
Original: ENGLISH

CORE DOCUMENT FORMING PART OF THE REPORTS OF STATES PARTIES

[Part One: 3 February 1993]
[Part Two: 31 December 1998]

CONTENTS

		Paragraphs	Page
	Part One: CHINA		
I.	LAND AND PEOPLE	1 - 12	3
	A. The land and people	1 - 6	3
	B. Status of national minorities	7 - 11	4
	C. Religious belief	12	5
II.	POLITICAL STRUCTURE	13 - 29	5
	A. Political history	13	5
	B. The pattern of political organization	14 - 29	5
III.	THE LEGAL SYSTEM FOR PROTECTING HUMAN RIGHTS	30 - 60	8
	A. Judicial, administrative and other bodies with jurisdiction over human rights	30 - 42	8
	B. Compensatory measures for injury to individual rights and compensation and rehabilitation systems for victims	43 - 47	11

CONTENTS (continued)

		Paragraphs	Page
C.	How the Constitution and other laws protect the various rights laid down in human rights instruments	48 - 50	12
D.	How human rights instruments fit into the State legal system	51 - 52	13
E.	Can human rights instruments be directly invoked or enforced through the courts and administrative machinery, or must they be transformed into domestic law or regulations before they can be applied by the competent authorities?	53	14
F.	Is there any machinery or State system responsible for supervising the enforcement of human rights?	54 - 60	14
IV.	PUBLICIZING HUMAN RIGHTS INSTRUMENTS	61 - 67	16
	Part Two: HONG KONG SPECIAL ADMINISTRATIVE REGION		
I.	LAND AND PEOPLE	68	17
II.	GENERAL POLITICAL STRUCTURE	69 - 95	21
A.	Constitutional document	69 - 71	21
B.	System of government	72 - 95	23
III.	GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED	96 - 115	27
IV.	INFORMATION AND PUBLICITY	116 - 118	33

Part One

CHINA

[Original: Chinese]
[3 February 1993]

I. LAND AND PEOPLE

A. The land and people

1. The People's Republic of China is a long-established unitary State of many nationalities, situated in eastern Asia on the western shores of the Pacific Ocean and covering an area of 9.6 million km^2, including some 1,430 million mu of cultivated land (one mu = 0.0667 hectares).

2. Administratively, the People's Republic of China is divided up as follows:

(a) The country is divided into provinces (xing), autonomous regions (zi-zhi qu) and directly governed municipalities (zhixia shi);

(b) The provinces and autonomous regions are divided into autonomous prefectures (zi-zhi zhou), counties (xian), autonomous counties (zi-zhi xian) and cities (shi);

(c) The counties and autonomous counties are divided into townships (xiang), nationality townships (minzu xiang) and towns (zhen).

The directly governed municipalities and large cities are divided into districts (qu) and counties. The autonomous prefectures are divided into counties, autonomous counties and cities.

3. By the end of 1991, the population of China stood at 1,158,230 million or a fifth of the world total, making China the world's most populous country. Population density is 120 inhabitants per km^2. Population distribution is uneven, tending to be concentrated in the east along the middle and lower reaches of the Yangtze River, the Pearl River delta, the middle and lower reaches of the Yellow River and the Sichuan (Szechuan) basin. Rural dwellers make up 73.63 per cent of the total population and urban dwellers, 26.37 per cent.

4. Gross national product in 1991 was 1,985,500 million yuan (renminbi), up 7.7 per cent on the previous year. Average peasant household income in 1991 was 708.5 yuan (renminbi), and average urban household income, 1,544 yuan (renminbi). Retail price levels in 1991 were 2.9 per cent up on 1990. Of workers in urban areas, 2.3 per cent were awaiting job assignments. In 1990, China borrowed 18,000 million yuan (renminbi) from abroad.

5. The birth rate in China in 1991 was 19.68 per thousand, the mortality rate, 6.7 per thousand, and natural population growth, 12.98 per thousand. Children under 14 made up 27.71 per cent of the population; persons aged 64 and over made up 5.99 per cent.

6. According to the fourth population census, taken in 1990, 15.88 per cent of the population aged 14 years and older were illiterate or semi-literate.

B. Status of national minorities

7. Among China's many nationalities, the Han are the largest group, numbering 1,040 million or 91.96 per cent of the total population; besides the Han there are a further 55 separate minority nationalities together numbering 91,200,000 people or 8.04 per cent of the population, including Mongols, Hui, Zang (Tibetans), Uighurs, Miao, Yi, Zhuang, Puyi, Koreans, Mon, Dong, Yao, Bai, Tuchia, Hani, Kazakhs, Dai and Li, all of which number over 1 million. There are 24 different nationalities living in Yunnan Province, and 12 in the Xinjiang Uighur Autonomous Region. Han Chinese is spoken throughout the country, but in areas where large numbers of any particular minority live, the language and script of that minority are also used.

8. Article 4 of the Chinese Constitution states that all nationalities in the People's Republic of China are equal. The State protects the lawful rights and interests of the minority nationalities and upholds and develops ties of equality, unity and mutual assistance between the various nationalities. Discrimination against or oppression of any nationality is prohibited, as is any action injurious to ethnic unity or causing ethnic divisions.

9. Given the extent and degree to which Chinese minority nationalities live in compact communities and their political, economic, cultural and other ties, the State applies a system of regional autonomy in areas inhabited by minorities, with autonomous authorities practising self-rule. National autonomous areas are divided into autonomous regions, autonomous prefectures and autonomous counties. At present there are 159 minority districts and autonomous areas (5 autonomous districts, 30 autonomous prefectures and 124 autonomous counties (banners)) which together account for 64 per cent of the total land area of China. In areas inhabited by two or more nationalities the State has set up 1,700 nationality townships, making it even easier for the minorities living there to enjoy equal rights.

10. Every national autonomous area is an inalienable part of the People's Republic of China. The authorities set up in national autonomous areas are the people's congresses and governments of the regions, prefectures and counties concerned. The autonomous authorities are a kind of State political organ. They exercise the authority bestowed on local State organs under chapter 3, section V of the Constitution, while at the same time exercising autonomy in accordance with the Constitution, the law on regional national autonomy and other legislation.

11. The people's government in national autonomous areas operates under a system whereby responsibility is borne by the regional chairmen, prefects and county chiefs; these are accountable to the people's assemblies at their

respective levels and to higher State organs. The people's government in each national autonomous area is a State organ under the direction of the State Council. The law also specifies that those in charge of the various administrative and other bodies in national autonomous areas (the chairman and vice-chairmen of the standing committees of people's congresses in autonomous regions, prefectures and counties, the chairmen of autonomous regions, prefects, county chiefs and so forth) must be of the nationality exercising regional autonomy.

C. Religious belief

12. China is home to many different religions, including Buddhism, Daoism, Islam, Catholicism, and Christianity. Buddhism, Daoism and Islam are fairly widespread. As there are no strict procedural restrictions on taking up or abandoning a religion, it is hard to put a number on the country's Buddhist and Daoists; the Hui, Uighur, Kazakh, Tatar, Tadjik, Uzbek, Kyrgyz, Tongxiang (Tunghsiang), Salar and Paoan (Bonan) peoples, among others, practise Islam, and together number over 17 million people; Catholics and Christians in China number between 3.5 and 4.5 million.

II. POLITICAL STRUCTURE

A. Political history

13. As a nation, China is one of the oldest on Earth. Together the country's various nationalities have built a bright and glorious history. China was one of the first nations on Earth with a developed economy and culture and has had a written history for nearly 4,000 years. The forebears of all China's peoples together built up a rich and varied culture in ancient times, and shared a long lasting, originally clan-based society. In the twenty-first century BC it was already a slave-owning society. In the Warring States period, beginning in 475 BC, a feudal society began to emerge. In 1911 AD a revolution overthrew the Ch'ing Dynasty, putting an end to 2,000 years of feudal empire. On 1 October 1949 the Chinese people, after a long and arduous struggle, founded the People's Republic of China. Since then, State power has been directly in the hands of the Chinese people, making them the masters of the country.

B. The pattern of political organization

14. The Constitution of the People's Republic of China is based on a summing-up of the historical experiences of China's peoples, and was drafted after extensive consultation of the views of the masses. It regulates the most fundamental points of principle relating to State affairs and life in society; the State political system, the economic system, the pattern of political organization, citizens' rights and obligations and other such important matters. The Constitution was passed and is subject to amendment by the National People's Congress, and the rules it lays down override and underpin all other laws and regulations. The present Constitution was adopted by the Fifth National People's Congress at its fifth session, on 4 December 1982, and contains a preamble and four chapters, together

comprising 138 articles, dealing with general principles, the fundamental rights and duties of citizens, the structure of the State, and the national flag, the national emblem and the capital.

15. Under the Constitution, politics in the People's Republic of China is organized in the form of people's congresses operating on the principle of democratic centralism, its essence consisting in the fact that all the power of the State belongs to the entire body of the people. The National People's Congress is made up of deputies elected for five-year terms by the provinces, autonomous regions and directly administered municipalities.

16. The apparatus of State comprises the National People's Congress and its Standing Committee, the presidency of the People's Republic of China, the State Council, the Central Military Commission, the Supreme People's Court, the Supreme People's Procuratorate, people's congresses and people's governments at every local tier, and the autonomous organs, people's courts and people's procuratorates of the national autonomous areas.

17. The National People's Congress is the supreme nationwide body whereby the people exercise State power. It has the power to pass laws and to decide on other important matters relating to the life of the State. It elects and can recall the President and Vice-President of the People's Republic of China, the Chairman of the Central Military Commission, the President of the Supreme People's Court and the Procurator-General of the Supreme People's Procuratorate, and appoints and can dismiss the Premier and Vice-Premiers, State Councillors, Ministers and commission chairmen, the Auditor-General and the Secretary-General of the State Council.

18. The specific duties of the National People's Congress include: amending the constitution and overseeing its implementation; passing and amending other national legislation; electing, appointing and recalling senior State officials; deciding on important matters of State; overseeing the activities of other State organs it establishes, and exercising such other functions as may be required.

19. The Standing Committee of the National People's Congress is the permanent organ of the Congress, and is empowered to exercise certain powers of State in accordance with the Constitution when the Congress is not in session. It comprises a chairman and a number of vice-chairmen, a secretary-general and other members elected by the Congress.

20. The powers of the Standing Committee include: interpreting the Constitution and overseeing its implementation; enacting legislation within the bounds laid down by the Constitution; interpreting the law; examining and ensuring that administrative rules and local regulations are in accordance with the Constitution and national legislation; reviewing and approving adjustments to the plan for national economic and social development and other State Budget Department proposals; overseeing the activities of the State organs; and exercising such other functions as are conferred upon it by the National People's Congress.

21. The presidency is a crucial part of the machinery of State in the People's Republic of China; pursuant to decisions by the National People's

Congress and its Standing Committee, the President promulgates laws, appoints the Premier and Vice-Premiers, ministers and commission chairmen on the State Council, declares war, proclaims mobilizations, and ratifies and abrogates treaties and important agreements with other countries.

22. The State Council (or the Central People's Government) is the executive arm of the highest organ of State authority, the supreme State executive organ. Under the Constitution, the State Council is responsible to and must report on its activities to the National People's Congress and its Standing Committee. It comprises the Premier, several Vice-Premiers, several State Counsellors, the heads of each government Ministry and Commission, the Auditor-General, and the Secretary-General, ultimate authority residing with the Premier. The State Council is responsible to the highest organ of State authority, but the Prime Minister is not personally responsible. The local people's government at every level is a State executive organ under the unified leadership of, and subordinate to, the State Council. The Council meets in plenary and in executive session. The plenary comprises all members of the Council. Under the organizational law on the State Council, important matters on the Council's agenda must be decided upon after discussion in an executive session or the plenary Council.

23. The responsibilities of the State Council include: enacting and promulgating regulations; adopting measures; submitting motions to the National People's Congress or its Standing Committee; directing and supervising the activities of its subsidiary ministries and commissions and local bodies at every level; directing and administering national defence, civil affairs, cultural and educational activities, and conducting foreign affairs; appointing and dismissing administrative personnel; and fulfilling such other responsibilities as are assigned to it by the supreme organ of State power.

24. Each of the ministries under the State Council has one minister and two to four deputy ministers. Each commission has one chairman and two to four vice-chairmen, plus 5 to 10 members. Every ministry and commission is required to exercise leadership, organization and management within the limits of its jurisdiction, and the instructions, directives and regulations it issues must be in keeping with the law and the administrative instructions and decisions issued by the State Council.

25. The Central Military Commission is the highest guiding body of the national defence forces, and ultimate responsibility for it rests with its Chairman; the Commission is responsible to the National People's Congress and its Standing Committee.

26. Local people's congresses are the organs of power at each level throughout the country; they guarantee respect for and compliance with the Constitution, law and administrative regulations within their respective districts, and exercise such other authority as is entrusted to them by the Constitution and laws. The people's government at every level is the local executive arm of the national organs of State power and of the State administration; within the limits laid down by the law it manages economic, educational, scientific, cultural and other administrative matters within the district concerned.

27. The people's government at every level is subordinate and accountable to the people's congress at the corresponding level but is also accountable to the people's government at the next higher level; the people's governments at every level are State administrative organs under the unified leadership of the State Council, and must obey its unified leadership.

28. The people's courts are judicial organs of the State. Under the Constitution and the Organization of the People's Courts Act, the People's Republic has established the Supreme People's Court, local people's courts and special people's courts. Local people's courts are divided into basic-level, intermediary and higher courts. Special courts are courts set up by the State to hear specially designated cases in specific domains: military courts, railway courts, marine courts, etc. Ordinary and special people's courts at every level are made up of a president and a vice-president, a presiding judge and deputy presiding judge and a number of judicial personnel, and has a judicial committee. People's courts include criminal, economic, civil and administrative chambers. The Supreme People's Court is the highest judicial organ in China. It oversees the judicial activities of people's courts and special people's courts at every local level. It is responsible to, and reports on its activities to, the National People's Congress and its Standing Committee. Local people's courts at every level are responsible and must report on their activities to the corresponding people's congress and its Standing Committee, and are also subject to supervision by courts at higher levels. Under the law, people's courts operate independently and are not subject to interference by administrative bodies, social groups or individuals. The people's courts apply the principle that the court of second instance is the court of final judgement.

29. The people's procuratorates are State legal supervisory bodies and part of the State judicial machinery. Under the Constitution and the Organization of the People's Procuratorate Act, the People's Republic of China has established the Supreme People's Procuratorate, local people's procuratorates at each level and military and other specialized people's procuratorates. Local people's procuratorates are divided into provincial, autonomous-region and directly-administered-municipality main and sub-procuratorates; autonomous-prefecture and provincially-managed municipal people's procuratorates; and county, municipal, autonomous-county and municipally-administered district people's procuratorates. The Supreme People's Procuratorate oversees the activities of the local and special procuratorates and the higher procuratorates oversee the activities of the lower. The Supreme People's Procuratorate is responsible to the National People's Congress and its Standing Committee, and the local people's procuratorates are responsible to the State judicial bodies which established them and to higher-level procuratorates.

III. THE LEGAL SYSTEM FOR PROTECTING HUMAN RIGHTS

A. Judicial, administrative and other bodies with jurisdiction over human rights

30. The judicial, administrative and other bodies with jurisdiction over human rights in China are the people's courts and people's procuratorates,

together with the public security, law enforcement, administrative and investigative organs subordinate to the State Council and local government.

31. The duties of the people's courts are to hear criminal, civil and administrative cases and economic disputes independently, in accordance with the law, and by means of such hearings to punish all criminals, rule on all matters raised in litigation, uphold respect for the laws and legal system of the State, protect the social order, and ensure that citizens' lawful property and personal, democratic and other rights are not infringed.

32. Basic-level people's courts serve as the courts of first instance in criminal, civil, economic and administrative cases except where the law or regulations specify that higher people's courts or special people's courts shall have jurisdiction; they deal with civil disputes which do not need to be brought to formal trial, and with petty criminal cases; and they direct the activities of people's conciliation committees.

33. Intermediate people's courts serve as the courts of first instance in those cases where the law specifies that they have jurisdiction, and in cases referred to them by basic-level people's courts; they hear appeals and counterappeals against verdicts and rulings by basic-level people's courts; and they hear counterappeals brought by the people's procuratorates under the adjudication supervisory procedure.

34. The higher people's courts serve as courts of first instance in those cases over which the law stipulates that they have jurisdiction, and over cases referred to them by lower people's courts; they hear appeals and counterappeals against decisions and rulings issued by intermediate people's courts; and they hear counterappeals brought by the people's procuratorates under the adjudication supervisory procedure.

35. The Supreme People's Court is by law assigned jurisdiction over important criminal cases of a national nature, over civil suits, economic disputes and administrative suits of national significance and over cases in which it considers that it should serve as the court of first instance; it hears appeals and counterappeals against decisions and rulings by higher and special people's courts; and it hears counterappeals brought by the Supreme People's Procuratorate under the adjudication supervisory procedure. It is also empowered to interpret for judicial purposes the specific points of law used by the courts in their judicial activity.

36. Among the special courts, the military tribunal was set up as the judicial organ of the People's Liberation Army, to adjudicate on military offences committed by serving personnel and other criminal cases; the marine tribunals adjudicate as courts of first instance in marine and merchant marine cases, including cases involving foreign nationals; the rail transport tribunals adjudicate in criminal cases occurring on the railways and disputes over infringements of rights. Appeals from marine tribunals are heard by a higher court in the same district. Appeals from rail transport tribunals are heard by intermediate rail transport tribunals.

37. Under the Organization of the People's Procuratorates Act, the duties of the people's procuratorates are:

(a) To investigate cases of treason, separatist activity and other serious offences imperilling the political, legal, statutory and governmental unity of the State;

(b) To investigate criminal cases it receives directly;

(c) To screen cases investigated by the public security organs and decide whether to arrest and prosecute the culprits or to drop the case; and to supervise the public security organs' handling of the investigation and ensure that it is lawful and effective;

(d) To bring and conduct the prosecution in criminal cases; and to supervise the activities of the people's courts to ensure that they are lawful and effective;

(e) To supervise the execution of sentence and rulings in criminal cases and the activities of prison, custodial and reform-through-labour authorities to ensure that they are lawful and effective.

38. In accordance with the law, the people's procuratorates guarantee the rights of the citizen to lodge complaints against State employees who break the law, and investigate and apportion responsibility for violations of citizens' personal, democratic and other rights.

39. The public security organs in China are State authorities that protect the social order and public security, and belong within the system of administrative authorities in the Chinese machinery of State, but under the law they also have certain judicial powers; they are responsible in the case of criminal prosecutions for investigating the facts, making arrests and conducting preliminary hearings and for coercive measures such as holding people in custody. Besides fulfilling their judicial functions under the Code of Criminal Procedure, the public security organs must also comply with the People's Police regulations, the Security Administration Punishment Regulations and the public order regulations issued by the Ministry of Public Security, and with the various local regulations and rules covering public security issued by local people's congresses and governments.

40. As the law assigns different functions to people's courts, people's procuratorates and the public security organs, so they divide their responsibilities, cooperating and interacting in the prosecution of criminal cases as the law dictates, for only within the bounds of shared responsibilities can they exercise their own powers: they cannot substitute for one another. Article 3 of the Code of Criminal Procedure states that responsibility for investigation, detention and conducting preliminary hearings in criminal matters rests with the public security organs. Authorizing arrests and investigations (including inquiries), and bringing prosecutions is the responsibility of the people's procuratorates. Trials are the responsibility of the people's courts. There are special provisions to

guarantee the independence of the courts and procuratorial organs, in the Chinese Constitution, the Organization of the People's Courts Act and the Organization of the People's Procuratorates Act.

41. The judicial organs are part of the State executive machinery - the Ministry of Justice and the judicial organs and criminal reform authorities at each tier of local government, under the authority of the State Council. Their main responsibilities are to carry out punishments and reform under detention, to oversee reeducation through labour and legal education, and to supervise lawyers and notaries; to direct the activities of the people's mediation committees; to supervise and direct the legal faculties in political and legal colleges and in institutes of higher education; and to provide guidance in international judicial assistance efforts and the production of judicial and legal publications and periodicals.

42. To ensure full, timely and effective administrative supervision, the State has established a special procuratorial authority responsible for supervising and checking up on how State bodies and their employees implement State law, regulations, decisions and rulings; it receives and hears complaints and reports of unlawful or undisciplined behaviour by State authorities and their employees; in accordance with the law it registers and investigates cases and, based on the results of its inquiries, makes recommendations to the competent administrative organ or issues warnings and written demerits or orders demotions, dismissals and other such sanctions. This authority is not the same as the administrative chambers set up by the people's courts under the Administrative Suits Act. The function of the administrative chambers is to hear administrative cases, in particular cases brought by individuals, bodies corporate and other organizations who consider that a State body or its employees have by their specific actions infringed their lawful rights and interests.

B. Compensatory measures for injury to individual rights and compensation and rehabilitation systems for victims

43. In China, citizens' personal rights and liberties are protected by the Constitution and the law. Broadly speaking, there are two aspects to State protection for personal rights and freedoms: the first consists in preventing citizens' personal rights and freedoms from injury by strictly applying the law relating to investigations, arrests and other encroachments on personal rights; the second, in the fact that if a citizen's personal rights are violated, he may by law register a complaint, file a report or lodge an appeal.

44. Article 41 of the Constitution states: "Citizens who have suffered losses through infringement of their civic rights by any State organ or functionary have the right to compensation in accordance with the law"; articles 2 and 67 of the Administrative Suits Act state that citizens, bodies corporate or other organizations which consider that their lawful rights and interests have been infringed through the specific actions of an administrative organ or an employee thereof are entitled under the Act to bring suits before the people's courts, and may also seek compensation. Article 68 of the same Act states: "A State administrative organ or employee thereof who deliberately or through grave error causes a citizen injury shall

be held responsible for making compensation, and the costs of such compensation shall be met out of local government resources. The people's government at each level may require the administrative body responsible to meet some or all of the costs of compensation."

45. Furthermore, articles 53 and 54 of the Code of Criminal Procedure also stipulate that the victim of a crime who has suffered injury as a result of criminal action by the defendant is entitled to bring a concomitant civil suit during the hearing of the criminal case. Where necessary, the people's court may seal or confiscate the accused's property. The concomitant civil suit must be heard together with the criminal case. Only where a combined hearing might excessively delay the criminal trial is it permissible to try the criminal case first and thereafter proceed, using the same trial arrangements, to hear the concomitant civil suit. In the event of refusal to honour liability to make compensation, the law permits the plaintiff to apply to the people's courts for enforcement of execution.

46. Chinese law also contains provisions on reparation for moral injury, as for example in article 32 of the Penal Code, which states: "Where a crime is too trivial to warrant criminal penalties, punishment may be waived but, depending on the circumstances of the case, a reprimand may be issued or the culprit may be ordered to sign a statement of repentance, make an apology, pay reparations, or compensate for the loss, or be subjected by the competent department to an administrative penalty." The Security Administration Punishment Regulations contain corresponding provisions on moral compensation. Such compensation is for the loss suffered by the injured party, not a form of punishment for the culprit. The extent of the compensation depends on the circumstances of each case.

47. The State judicial and administrative organs currently base compensation to victims on the principle of full and fair redress. There are no specific provisions in law relating to the amount or manner of compensation: these are determined by the judicial organs in accordance with the nature of each specific case. If the victim does not receive compensation or insufficient compensation is paid, the courts can apply coercive measures in accordance with the law. To promote the use of compensation, the Chinese legislature is currently pressing ahead with the formulation of a compensation act. Until the Act is passed, it is important to note that by means of an administrative or judicial ruling payment of costs such as medical expenses, lost earnings or food subsidies may be negotiated or ordered by the administrative authorities, or a concomitant civil suit may be brought along with a criminal case so that the court can order compensation to be paid.

C. How the Constitution and other laws protect the various rights laid down in human rights instruments

48. China has always respected and acknowledged the purposes and principles of the Charter of the United Nations concerned with the protection and promotion of human rights. It admires and supports efforts by the United Nations to promote human rights and fundamental freedoms generally, and plays a constructive part in work within the United Nations system to draft and adopt human rights legal instruments. Since 1980, it has signed, ratified and acceded to a series of international human rights agreements, including

the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention relating to the Status of Refugees, the Protocol relating to the Status of Refugees, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child.

49. All the rights set forth in human rights instruments are protected by the Chinese Constitution and separate regulations. For instance, the Chinese Constitution specifies that all citizens are equal before the law (art. 33); citizens' personal freedom is not subject to violation (art. 37); their homes are inviolable (art. 39); the State protects their right to own lawfully earned income, savings, houses and other lawful property (art. 13); citizens' personal dignity is inviolable (art. 38); citizens have freedom of speech, of the press, of assembly, of association, of procession and of demonstration (art. 35); they have freedom of religious belief (art. 36); they have the duty as well as the right to receive an education (art. 46); they have the right to lodge complaints and lay charges against State organs and their personnel, and to obtain compensation (art. 41); and every nationality has the right to use and develop its own language and script.

50. Other individual statutes and regulations such as the Marriage Act, the General Principles of Civil Law, the National Regional Autonomy Act, the Assemblies, Marches and Demonstrations Act, the Civil Suits Act, the Penal Code, the Code of Criminal Procedure, the Administrative Suits Act, the Compulsory Education Act and the Environmental Protection Act contain specific provisions protecting the rights of Chinese citizens.

D. How human rights instruments fit into the State legal system

51. To render international human rights agreements consistent with domestic law and make them a part of the domestic legal system, under article 67, subsection 14, of the Constitution, accession by China to an international human rights agreement must be approved by the Standing Committee of the National People's Congress. Once approved, the instrument is binding under Chinese law and China must honour the corresponding obligations: no further special legal transformation is required to turn it into domestic law.

52. Can an international convention cause a conflict with domestic law? Simply stated, when China concludes or becomes party to an international treaty, it pays very close attention to the question of harmony between the treaty and domestic law, and no conflict of principle can arise. In the event of a discrepancy between the international treaty and domestic law on any specific provision, the treaty takes precedence unless China entered a reservation upon ratifying or acceding to it. This is clearly stated in a number of pieces of legislation. As regards punishment, where an international human rights instrument makes no specific provision a domestic law corresponding in purpose to the treaty is used for guidance in such a manner as to preserve the thrust of the human rights agreement.

E. Can human rights instruments be directly invoked or enforced through the courts and administrative machinery, or must they be transformed into domestic law or regulations before they can be applied by the competent authorities?

53. In China, any international human rights agreement, after approval by the legislature, establishes obligations which China must comply with. The judicial and executive authorities and all public associations concerned then apply the agreement within their respective spheres of competence. To resolve specific questions of penalties for which an agreement makes no provision, the overwhelming majority of treaties have to be enforced by means of domestic laws corresponding in purpose. In the event of discrepancies between domestic law and an international human rights agreement ratified or acceded to by China, the international agreement will take precedence unless China has entered a reservation to it.

F. Is there any machinery or State system responsible for supervising the enforcement of human rights?

54. Supervision of the enforcement of international human rights agreements in China is of a piece with supervision of the enforcement of domestic law. The Chinese legal supervisory system includes supervision by the organs of State power, by administrative bodies, by judicial organs and by the public.

55. Supervision by the organs of State power means that the National People's Congress and its Standing Committee supervise the enforcement of the Constitution and laws: people's congresses at every level and the standing committees of people's congresses from the county level upwards guarantee respect for and compliance with the Constitution, law, administrative regulations and local ordinances within their respective administrative districts. There are two aspects to supervision of the way the Constitution and law are applied: the first entails checking whether each individual law, administrative regulation, local ordinance and rule is consistent with the spirit and letter of the Constitution; the second entails checking to see whether the Constitution is breached by the actions of the State machinery, any public association or any citizen. The National People's Congress is empowered to amend or rescind any law or regulation in breach of the Constitution, including inappropriate decisions by the Standing Committee; the Standing Committee of the National People's Congress is empowered to rescind administrative regulations, decisions and rulings that contradict the Constitution or law, and local regulations and resolutions passed by the organs of State authority in provinces, autonomous regions and directly administered municipalities which contradict the Constitution, law or administrative regulations. Local people's congresses and their standing committees at the county level and above are empowered to rescind inappropriate decisions and rulings by the people's government at the same level and inappropriate resolutions passed by lower level people's congresses.

56. Supervision by administrative bodies means that higher-level administrative organs oversee lower-level ones, and administrative organs oversee business and industrial work-units and individual citizens to ensure that they comply with and respect administrative laws and regulations.

57. In 1986, a resolution passed at the eighteenth session of the Sixth National People's Congress set up procuratorial bodies to supervise the manner in which State organs and their employees enforce State law, regulations, decisions and rulings, to receive reports and complaints about State bodies and their employees who break the law or breach discipline, register and investigate cases in accordance with the law and, depending on the results, to make recommendations to the competent administrative body, or issue cautions and written demerits or order demotions, dismissals or other such sanctions.

58. Under the heading of judicial supervision, the Supreme People's Court monitors verdicts and rulings by lower people's courts which have already acquired legal force, and higher people's courts monitor verdicts and rulings by people's courts below them which have already acquired legal force. If they discover an error in fact or law they are entitled to review the case or order the lower court to rehear it. If the president of a people's court discovers an error in a verdict or ruling by his court which has already entered into force, he must refer the matter to the judicial committee for action. The judicial activities of lower people's courts are monitored by higher people's courts.

59. The people's procuratorates are special legal supervisory bodies whose specific functions include overseeing investigations, trials and prisons, criminal abuse of their position by State employees, and supervising civil trials and administrative suits. They oversee the law through the exercise of their procuratorial authority. They function as statutory supervisory bodies not by monitoring how all laws are enforced, but in accordance with the laws themselves, exercising their procuratorial authority within definite limits. People's procuratorates at each level supervise State organs and their employees, but are required to mount investigations and apportion responsibility only when serious breaches of the law occur. In the case of ordinary breaches of policy or discipline, it is the supervisory bodies that intervene.

60. Public supervision refers to the extensive and unprompted participation, in various forms by the masses of the people, in supervising enforcement of the law by State employees. It may take the following forms:

- Supervision by public organizations: people's political consultative conferences oversee the exercise of State affairs and compliance with the Constitution and law by means of consultations, discussions, criticisms and proposals;

- Supervision by public opinion: the masses of the people, through newspapers, the radio and other media, unmask any kind of unlawful or undisciplined behaviour, and support and oversee the judiciary as it punishes crimes in accordance with the law;

- Supervision by the masses: this refers to direct involvement by the masses in statutory supervision, including the enactment, application and enforcement of legislation. The State provides ample opportunity and safeguards for this, for example by setting up reception centres, mail offices and telephone links.

IV. PUBLICIZING HUMAN RIGHTS INSTRUMENTS

61. The Chinese Government extensively publicizes and disseminates the international Human Rights instruments it recognizes or accedes to, to heighten awareness of the rights they proclaim among the public and the bodies concerned.

62. According to statutory procedure, international human rights instruments for ratification or accession by China must be studied and discussed by the relevant Government departments and then referred to the Standing Committee of the National People's Congress for approval; once ratified, the Government will publicize them throughout the country and the departments concerned will begin to put them into effect.

63. Human rights instruments are publicized chiefly through the daily news, television and news broadcasts, the press etc. Government bodies or popular organizations may hold meetings, print and distribute material on the subject, organize one-day city-wide or nationwide publicity campaigns, produce reports, organize lecture tours, or photographic exhibitions, artistic displays and so forth to spread the word. The rights of the young, the elderly and the handicapped are publicized in courses on the legal system given at primary and secondary schools, and, in the case of the elderly and disabled, in the streets and houses where they live, to make sure that they are aware of their rights; tests, and compilations such as the "Survey of United Nations material on crime prevention and related subjects", are used to publicize such rights among State employees, in particular public security, procuratorial, court and judicial staff.

64. Many public research institutes and institutions of higher learning have in recent years set up human rights faculties to conduct specialized research on human rights, and they often run local or national seminars.

65. Such publicity and propaganda activities, when held in areas inhabited by minority nationalities, tend to be staged in the language of the nationalities concerned. Television broadcasts and publications in such areas also use the languages of the local minorities.

66. The Government also uses publicity designed to promote the general public's knowledge of the legal system, including international human rights instruments, to enhance public awareness of the legal system. In 1985 it passed a resolution calling for a five-year nationwide drive to extend people's general knowledge of the law. According to the statistics, by 1988 among 750 million subjects of ordinary law, 520 million had received some general legal education. To consolidate and expand upon the fruits of the five-year drive, the Government has passed another resolution whereby beginning in 1991, again for a five-year period, it will continue to mount a wide variety of publicity and educational activities concerned with the legal system.

67. The Ministry of Foreign Affairs of the People's Republic of China is responsible for transmitting reports on compliance with international human rights treaties to the special bodies set up under those treaties. It gathers

the material and information for the reports from the domestic news media, public associations and government departments. What goes into a report is not normally a subject for public discussion, but the report, once finalized is made available to the public.

Part Two

HONG KONG SPECIAL ADMINISTRATIVE REGION

[Original: ENGLISH]
[31 December 1998]

I. LAND AND PEOPLE

68. Background statistical information, using the most up-to-date figures available, is as follows:

(a) Population by sex

Sex	Mid-1987 (million)	Mid-1992 (million)	Mid-1998 (million)
Male	2.9	2.9	3.4
Female	2.7	2.9	3.3
Total	5.6	5.8	6.7

(b) Population by age group and sex

Age	Sex	Percentage of total population		
		Mid-1987	Mid-1992	Mid-1998
Under 15	Male	11.7	10.6	9.0
	Female	10.8	9.9	8.4
15-64	Male	36.3	36.2	36.5
	Female	33.2	34.2	35.6
65 and over	Male	3.4	4.0	4.8
	Female	4.5	5.0	5.7
All age groups	Male	51.4	50.8	50.4
	Female	48.6	49.2	49.6

(c) Educational attainment (for population aged 15 and above)

Educational attainment	Sex	Percentage		
		1986	1991	1996
No schooling/kindergarten	Male	3.6	3.6	2.5
	Female	10.5	9.1	7.0
Primary	Male	15.8	13.2	11.2
	Female	13.5	12.0	11.4
Secondary and above	Male	31.8	33.8	35.8
	Female	24.8	28.2	32.1

(d) Literacy rate (1984): 88.4% (1996): 90.5%

(e) Percentage of population (excluding mutes) aged five and over by usual language/dialect

Usual language/dialect	Percentage	
	1991	1996
Cantonese	88.7	88.7
Putonghua	1.1	1.1
Other Chinese dialects	7.0	5.8
English	2.2	3.1
Others	1.0	1.3
	100.0	100.0

(f) Crude birth and death rates

	1987	1992	1997
Crude birth rate (per 1,000 population)	12.6	12.3	9.1
Crude death rate (per 1,000 population)	4.8	5.3	4.9

(g) Expectation of life at birth (number of years)

Sex	1987	1992	1997
Male	74.2	74.8	76.8
Female	79.7	80.7	82.2

(h) Infant mortality rate (per 1,000 live births)

1987	1992	1997
7.4	4.8	3.9

(i) Maternal mortality rate (number of deaths per 100,000 total births)

1987	1992	1997
4.3	5.5	1.6

(j) Fertility rate

General fertility rate (per 1,000 women aged 15-49) excluding female foreign domestic helpers	1987	1992	1997
	47.9	46.3	33.5

(k) Percentage of household heads by sex

Sex	1986	1991	1996
Male	73.0	74.3	72.8
Female	27.0	25.7	27.2

(l) Unemployment rate

(Averages of the estimates obtained from the quarterly General Household Surveys of the year)	1987	1992	1997
	1.7	2.0	2.2

(m) Rate of inflation

(i) Composite consumer price index (CPI)	
Year	Annual rate of increase in CPI (%)
1990	10.2
1991	11.6
1992	9.6
1993	8.8
1994	8.8

(i) Composite consumer price index (CPI)	
Year	Annual rate of increase in CPI (%)
1995	9.1
1996	6.3
1997	5.8

Note: The composite CPI is compiled on the basis of expenditure patterns of about 90 per cent of households in the HKSAR, which had an average monthly expenditure of HK$ 4,000 - HK$ 59,999 during the base period of October 1994 - September 1995. This approximately corresponds to a monthly expenditure range of HK$ 4,600 - HK$ 69,200 at 1997 prices.

(ii) Implicit price deflators of gross domestic product (GDP)*		
Deflator Year	(1990 = 100)	Annual rate of change (%)
1990	100.0	7.5
1991	109.2	9.2
1992	119.8	9.7
1993	130.0	8.5
1994	139.0	6.9
1995	142.5	2.5
1996	150.2	5.4
1997	159.0	5.9

(n) GDP for 1990-1997*

Year	At current market prices (US$ million)	At constant (1990) market prices (US$ million)
1990	74 791	74 791
1991	86 027	78 756
1992	100 676	84 013
1993	116 011	89 222
1994	130 808	94 139
1995	139 238	97 703

Year	At current market prices (US$ million)	At constant (1990) market prices (US$ million)
1996	154 171	102 622
1997	171 406	107 796

(o) Per capita income
(Per capita GDP for 1990-1997*)

Year	At current market prices (US$)	At constant (1990) market prices (US$)
1990	13 111	13 111
1991	14 956	13 692
1992	17 357	14 484
1993	19 660	15 120
1994	21 674	15 598
1995	22 618	15 871
1996	24 429	16 261
1997	26 362	16 579

(p) External debt: the HKSAR government does not incur external debts.

* GDP figures refer to the estimates released in March 1998.

II. GENERAL POLITICAL STRUCTURE

A. Constitutional document

69. In accordance with the provisions of article 31 and subparagraph 13 of article 62 of the Constitution of the People's Republic of China, as well as the relevant decisions of the National People's Congress (NPC) adopted at the third session of the seventh NPC on 4 April 1990, the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR) was established on 1 July 1997. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China was also put into effect on 1 July 1997. Under the principle of "One Country, Two Systems", the socialist system and policies are not practised in the HKSAR and Hong Kong's previous capitalist system and way of life will remain unchanged for 50 years.

70. To fully realize the principle of "One Country, Two Systems", the Basic Law sets out the broad framework of the relationship between the Central Authorities and the HKSAR (chap. II); the fundamental rights and duties of Hong Kong residents (chap. III); the political structure (chap. IV); economic,

financial and social systems of the HKSAR (chaps. V and VI); its conduct of external affairs (chap. VII); as well as the interpretation and amendment of the Basic Law (chap. VIII).

71. Among other matters, the Basic Law provides that:

(a) The HKSAR shall enjoy a high degree of autonomy except in defence and foreign affairs and exercise executive, legislative and independent judicial power, including that of final adjudication. The power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal established in the Region;

(b) The executive authorities and legislature of the HKSAR shall be composed of permanent residents of Hong Kong;

(c) The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravenes the Basic Law, and subject to any amendment by the legislature of the HKSAR;

(d) National laws shall not be applied in the HKSAR except for those listed in annex III to the Basic Law and that the laws listed therein shall be applied locally by way of promulgation or legislation by the Region. The Standing Committee of the National People's Congress may add to or delete from the list of laws in annex III after consulting the Committee for the Basic Law of the HKSAR and the HKSAR government;

(e) The HKSAR is authorized to conduct external affairs on its own. The HKSAR may, on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with foreign States and regions and relevant international organizations in the appropriate fields, including economic, commercial, financial and monetary, shipping, communications, tourism, cultural and sports;

(f) The HKSAR remains a free port, a separate customs territory and an international financial centre. There shall be free flow of capital. HKSAR issues and manages its own currency;

(g) The HKSAR formulates its own policies on the development of education, science, culture, sports, labour and social services, and Hong Kong residents have the freedom of religious belief;

(h) Hong Kong residents enjoy a wide range of freedoms and rights and this will be further dealt with under the section "General legal framework within which human rights are protected"; and

(i) The provisions of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and international labour conventions as applied to Hong Kong shall remain in force.

B. System of government

General structure

72. The Chief Executive of the HKSAR is the head of the Region. An Executive Council assists him in policy-making. The Legislative Council of the HKSAR is the legislature of the Region - it legislates, controls public expenditure and raises questions on the work of the government. The method for the formation of the Legislative Council is stipulated in the Basic Law and the "Decision on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR" adopted at the third session of the seventh NPC on 4 April 1990. The method for formation of the district organizations, including the municipal councils and district boards, are prescribed by law.

Chief Executive

73. The Basic Law provides that the Chief Executive of the HKSAR shall be selected by election or through consultations held locally and be appointed by the Central People's Government. The method for selecting the Chief Executive is to be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress.

74. The first Chief Executive was selected in accordance with the NPC's "Decision on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR". A selection committee was formed to recommend a candidate to the Central People's Government for appointment. The selection committee comprised 400 members from various sectors of the community. In future, the Chief Executive will be elected by an election committee comprising 800 members.

75. Annex I to the Basic Law further provides that amendments to the method for selecting the Chief Executive for the terms subsequent to the year 2007 may be made with the endorsement of a two thirds majority of all the members of the Legislative Council and the consent of the Chief Executive. Any such amendments are to be reported to the Standing Committee of the NPC for approval. Article 45 of the Basic Law provides that the ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

Executive Council

76. Members of the Executive Council of HKSAR are appointed by the Chief Executive from among the principal officials of the executive authorities, members of the Legislature Council and public figures. Their appointment or removal shall be decided by the Chief Executive. The total number of these appointed members is not specified. At present, there are 14 members.

77. The Council normally meets once a week. The Chief Executive presides over its meetings. He is required by article 56 of the Basic Law to consult the Executive Council before making important policy decisions and introducing

bills to the Legislative Council. Members tender their advice on an individual basis, but the Council's conclusions are presented as collective decisions.

Legislative Council

78. Article 68 of the Basic Law provides that the HKSAR Legislative Council shall be constituted by election. The method for its formation shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The composition of the Legislative Council in its first three terms will be as follows:

Membership	First term 1998-2000 (two years)	Second term 2000-2004 (four years)	Third term 2004-2008 (four years)
Elected by geographical constituencies through direct elections	20	24	30
Elected by functional constituencies	30	30	30
Elected by an election committee	10	6	-
Total	60	60	60

79. Annex II to the Basic Law further provides that amendments to the method for forming the Legislative Council after 2007 may be made with the endorsement of a two thirds majority of all the members of the Council and the consent of the Chief Executive. Any such amendments are to be reported to the Standing Committee of the NPC for the record. According to article 68 of the Basic Law, the ultimate aim is the election of all the members of the Legislative Council by universal suffrage.

80. According to article 73 of the Basic Law, the powers and functions of the Legislative Council include enactment, amendment or repeal of laws in accordance with the provisions of the Basic Law and legal procedures; examining and approving budgets introduced by the government; approving taxation and public expenditure; receiving and debating the policy statements of the Chief Executive; raising questions on the work of the government; debating any issue concerning public interests; endorsing the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court; and receiving and handling complaints from Hong Kong residents. The Council is also empowered to impeach the Chief Executive under certain prescribed circumstances.

Municipal Councils

81. The Municipal Councils comprise the Urban Council and the Regional Council. The two bodies operate at the regional level and, respectively, provide "municipal services" in the urban areas and the New Territories.

These services include maintaining environmental hygiene, protecting public health, providing facilities and programmes for sports, recreation, culture and entertainment. The Councils are statutory bodies and are financially autonomous.

District Boards

82. The District Boards are statutory bodies established to provide a forum for public consultation and participation at the district level. They play an advisory role with substantial responsibility for the management of district affairs and community halls. They discuss a wide range of matters affecting the well-being of residents in their districts and recommend appointments to the various local bodies. They are also allocated public funds for undertaking cultural and recreational activities for local communities and for minor environmental improvement works.

Provisional Legislative Council, Provisional Municipal Councils and Provisional District Boards

83. The former legislature of Hong Kong established under British rule ceased to exist on 1 July 1997 after the then existing constitutional instruments had lapsed when the People's Republic of China resumed exercising sovereignty over Hong Kong. In preparation for the establishment of the HKSAR, the Preparatory Committee had, on 24 March 1996, decided to establish the Provisional Legislative Council to perform specified tasks to enable the business of Government to continue before elections could be held to form the first Legislative Council of the HKSAR.

84. The Provisional Legislative Council comprised 60 members who were elected by the Selection Committee for the First Government of the HKSAR on 21 December 1996. Major tasks of the Council were to enact laws which were essential for the normal operation of the HKSAR; to amend and repeal laws where necessary in accordance with the Basic Law; examine and approve budgets introduced by the government; approve taxation and public expenditure; receive and debate the policy statements of the Chief Executive; and endorse the appointment of the judges of the Court of Final Appeal and the Chief Judge of the High Court. The term of office of the Council members expired on 30 June 1998.

85. The former Municipal Councils and District Boards established under British rule were dissolved on 30 June 1997. In preparation for the establishment of the HKSAR, the Preparatory Committee had, on 1 February 1997, decided that provisional district organizations including the Provisional Urban Council, the Provisional Regional Council and Provisional District Boards should be set up on 1 July 1997 by the HKSAR government before elections could be held to form the first district organizations of the Region. The members of these provisional bodies were appointed by the Chief Executive of the HKSAR. Their term of office will end no later than 31 December 1999.

86. The Provisional Urban Council and Provisional Regional Council each comprises 50 members. The members include all elected members of the former Urban Council and the Regional Council. In addition, nine new members were

appointed to the Provisional Urban Council and 11 new members to the Provisional Regional Council. The 18 Provisional District Boards have a total of 468 members, including all elected members of the former District Boards and 95 new members. The government is now conducting a review of the Municipal Councils and District Boards so as to decide whether the present structure of local representative institutions can continue to ensure the efficient and responsive delivery of services to our evolving community.

The structure of the Administration

87. The Chief Executive is the head of the HKSAR government. If the Chief Executive is not able to discharge his duties for a short period, such duties will temporarily be assumed by the Chief Secretary for Administration, the Financial Secretary or the Secretary for Justice, in that order of precedence.

88. A Department of Administration, a Department of Finance, a Department of Justice, and various bureaux, divisions and commissions are established in the HKSAR government. There are currently 13 policy bureaux and two resource bureaux concerned respectively with finance and the civil service. The bureaux, each headed by a Secretary, collectively form the government secretariat.

89. With certain exceptions, the heads of government departments are responsible to the bureaux Secretaries for the direction of their departments and the efficient implementation of approved government policy. The exceptions are the Independent Commission Against Corruption and the Commission of Audit, each of which functions independently and is accountable to the Chief Executive.

The judicial system of the HKSAR

90. The legal system is firmly based on the rule of law and a judiciary which is independent of the legislative and executive branches of government.

91. Article 19 of the Basic Law provides that the HKSAR shall be vested with independent judicial power, including that of final adjudication. The courts of the HKSAR shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained.

92. The courts of justice comprise the Court of Final Appeal, the High Court (which consists of the Court of Appeal and the Court of First Instance), the District Court, the Magistracy, the Lands Tribunal, the Labour Tribunal, the Small Claims Tribunal, the Obscene Articles Tribunal and the Coroner's Court. The courts hear and determine all criminal trials and civil disputes, whether between individuals or between individuals and the government of the Region.

93. Article 82 of the Basic Law provides that the power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal of the Region, which may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal. By virtue of article 83, the structure, powers and functions of the courts of the HKSAR at all levels are prescribed by law.

94. All judges and judicial officers must have qualified as legal practitioners in Hong Kong or in a common law jurisdiction and have substantial professional experience. Article 88 of the Basic Law provides that "Judges of the courts of the HKSAR shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors."

95. Judges have security of tenure. Article 89 of the Basic Law provides that "A judge of a court of the HKSAR may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges. The Chief Justice of the Court of Final Appeal of the HKSAR may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in this Law".

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

Rule of law

96. The fundamental basis for the protection of human rights is the rule of law maintained by an independent judiciary (see paras. 90-95 above). The principles that inform the rule of law are:

(a) The supremacy of the law. No individual is punishable or can lawfully be made to suffer personally or financially except for a breach of law established before the independent courts. Where, under the law, an official or an authority has a discretion to make a decision, that discretion must be exercised legally, fairly and reasonably. Where it does not do so, the decision must be capable of successful challenge before the courts. The Basic Law guarantees the right of Hong Kong residents to institute legal proceedings in the courts against the acts of the executive authorities and their personnel; and

(b) Equality before the law. Article 25 of the Basic Law provides that all Hong Kong residents shall be equal before the law. Article 22 provides that all offices set up in the HKSAR by departments of the Central People's Government, or by provinces, autonomous regions, or municipalities directly under the Central Government and personnel of these offices shall abide by the laws of the Region. Article 14 provides that members of the garrison shall, in addition to abiding by national laws of the People's Republic of China, abide by the laws of the HKSAR. Article 35 also provides that Hong Kong residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel. No government authority or official, and no individual, is above the law. All persons, regardless of race, rank, politics, religion or sex, are equal before the law and subject to the same law. Individuals and the HKSAR government have the same access to the courts to enforce legal rights or defend an action. Some commentators have argued that the principle of

equality before the law was compromised by a recent amendment to the Interpretation and General Clauses Ordinance (chap. 1 of the Laws of the HKSAR). The amendment in question was a replacement of the reference to the "Crown" by the "State" in section 66 of the Ordinance. Before 1 July 1997, section 66 used to provide that no ordinance was binding on the Crown unless it expressly stated, or necessarily implied, that the Crown was bound. After 1 July 1997, the reference to the "Crown" in section 66 had to be amended. The amendment to section 66 of chapter 1 was simply made in order to preserve the substance of the law before 1 July 1997 and reflect the change of sovereignty.

Human rights guarantees in the Basic Law

97. It is now possible to employ legal arguments and take legal action based on the principle of consistency with the Basic Law. Indeed, the application of the Basic Law has already been tested in several court cases.

98. Article 4 of the Basic Law provides that the HKSAR shall safeguard the rights and freedoms of residents of the HKSAR and of other persons in the Region in accordance with law. The Basic Law guarantees a wide range of freedoms and rights, including:

(a) Equality before the law;

(b) Freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions and to strike;

(c) Freedom of the person; freedom from torture; freedom from arbitrary or unlawful arrest, detention or imprisonment; freedom from arbitrary or unlawful search of the body; and right against arbitrary or unlawful deprivation of life;

(d) Freedom from arbitrary or unlawful search of, or intrusion into, one's home or other premises;

(e) Freedom and privacy of communication;

(f) Freedom of movement within the HKSAR and freedom of emigration to other countries and regions and freedom to travel and to enter or leave the Region;

(g) Freedom of conscience; freedom of religious belief and freedom to preach and to conduct and participate in religious activities in public;

(h) Freedom of choice of occupation;

(i) Freedom to engage in academic research, literary and artistic creation, and other cultural activities;

(j) Right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies; right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel;

(k) Right to social welfare in accordance with the law; and

(l) Freedom of marriage and right to raise a family freely.

99. Persons in Hong Kong other than Hong Kong residents shall, in accordance with law, enjoy the rights and freedoms of Hong Kong residents prescribed by chapter III of the Basic Law. In addition, permanent residents of the HKSAR enjoy the rights to vote and to stand for election in accordance with law.

Effect of other human rights instruments in HKSAR law

100. Article 39 of the Basis Law - and the Joint Declaration - guarantee that the provisions of the ICCPR and the ICESCR as applied to Hong Kong shall remain in force. The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the two Covenants.

101. In general, and as is usual in common law systems, treaties that apply to Hong Kong (including human rights treaties) do not themselves have the force of law in the domestic legal system of Hong Kong. They cannot be directly invoked before the courts as the source of individual rights. However, the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with these international obligations. The usual method of giving effect in local law to treaty obligations (when these require some change in existing laws or practice) is to enact specific new legislation*. Where this results in the creation or definition of specific legal rights and where these rights are denied or interfered with (or there is the threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation; or the law may provide criminal sanction.

Bill of Rights Ordinance

102. The Hong Kong Bill of Rights Ordinance (BORO) (chap. 383 of the Laws of the HKSAR) was enacted in June 1991 specifically to give effect in local law

---

* An example is the Crimes (Torture) Ordinance (chap. 427 of the Laws of the HKSAR) which was enacted to give effect in Hong Kong to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

to the provisions of the ICCPR as applied to Hong Kong. It achieves this by setting out a detailed Bill of Rights, the terms of which are almost identical to those of the ICCPR.

Adoption of laws: effect on the BORO

103. Article 160 of the Basic Law provides that the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the NPC declares to be in contravention of the Basic Law. In February 1997, the Standing Committee considered that three sections of the BORO (relating to the interpretation and application of the Ordinance* had an overriding effect over other laws, including the Basic Law. As such, they contravened the Basic Law and could not be adopted.

104. The non-adoption of these sections has no effect on the protection of human rights in the HKSAR in view of the constitutional guarantee in article 39 of the Basic Law. The substantive protections in Part II of the Ordinance (almost identical to the provisions of the ICCPR) are unchanged. So too are the remedies provided under section 6 for contravention of the Ordinance and the binding effect on the government and all public authorities under section 7.

Legal aid

105. Legal aid in the HKSAR is mainly provided by the Legal Aid Department and the Duty Lawyer Service.

---

* The three sections were:

(a) section 2 (3): "In interpreting and applying this Ordinance, regard shall be had to the fact that the purpose of this Ordinance is to provide for the incorporation into the law of Hong Kong of provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong, and for ancillary and connected matters."

(b) section 3: "Effect on pre-existing legislation:

(1) All pre-existing legislation that admits of a construction consistent with this Ordinance shall be given such a construction.

(2) All pre-existing legislation that does not admit of a construction consistent with this Ordinance is, to the extent of the inconsistency, repealed."

(c) section 4: "Interpretation of subsequent legislation - All legislation enacted on or after the commencement date shall, to the extent that it admits of such a construction, be construed so as to be consistent with the International Covenant on Civil and Political Rights as applied to Hong Kong."

106. The Legal Aid Department provides eligible persons with legal representation in both civil and criminal cases. Applicants must satisfy the Director of Legal Aid of their financial eligibility (the means test) and of the justification for legal action (the merits test). In criminal cases, the Director of Legal Aid has a discretion to grant legal aid to an applicant who fails the means test if the Director is satisfied that it is in the interests of justice to do so. Moreover, in cases of murder, treason or invasion of privacy with violence, the granting of legal aid to persons for their deference or appeal is mandatory so long as they can pass the means test.

The Duty Lawyer Service

107. The Duty Lawyer Service is managed and administered by the Law Society and the Bar Association of Hong Kong. It complements the services by the Legal Aid Department and comprises:

(a) The Duty Lawyer Scheme which offers legal representation to defendants (juvenile and adult) who are charged in the Magistracies and who cannot afford private representation. Applicants are subject to a simple means test and a merits test - based on the "interests of justice" principle - in accordance with article 14 of the ICCPR and article 11 of the Bill of Rights.

(b) The Legal Advice Scheme which provides members of the public with free legal advice through individual appointments; and

(c) the "Tel Law Scheme" which provides taped information on legal aspects of everyday problems.

Office of the Ombudsman

108. The Ombudsman - formerly known as the Commissioner for Administrative Complaints (COMAC) - is an independent authority, established under the Ombudsman Ordinance (previously known as the COMAC Ordinance). The Ombudsman investigates and reports on grievances arising from maladministration. "Maladministration" includes such things as inefficient, bad or improper administrative decisions, acts, recommendations or omissions. Members of the public can complain directly to the Ombudsman. He can also initiate investigations on his own volition and may publish investigation reports of public interest. Additionally, the Ombudsman is empowered to investigate complaints of non-compliance with the administrative Code on Access to Information*.

109. To enable him to carry out his functions effectively, the Ombudsman is able to appoint his own staff to carry out his duties. Subject to the Ombudsman Ordinance, he may obtain any information and documents from such persons as he thinks fit; he may summon any person to provide information relating to his investigations and may enter any premises of the organizations

---

* The Ombudsman's powers in respect of the Code on Access to Information extend to the Police and the Independent Commission Against Corruption, as well as to all other departments.

under his jurisdiction to conduct investigations. He also has sufficient means with which to ensure that his recommendations are heard and acted upon.

110. After investigation of a complaint, the Ombudsman is empowered to report his opinion and reasons, together with a statement of any remedy and recommendation that is considered necessary, to the head of the organization affected. If the Ombudsman believes that there has been a serious irregularity or injustice done, he may make a report to the Chief Executive of the HKSAR. Such a report is bound by law to be laid before the Legislative Council.

111. With two exceptions, the Ombudsman has jurisdiction over all government departments of the HKSAR and major statutory bodies. The exceptions are the Police and the Independent Commission Against Corruption (ICAC). Complaints against these departments are handled by discrete, dedicated bodies (see paras. 112 and 113 below).

Complaints and investigations

112. The Complaints Against Police Office (CAPO) investigates all complaints about the conduct and behaviour of members of the police force. The CAPO's investigations are monitored and reviewed by the Independent Police Complaints Council. This is an independent body comprising non-official members appointed by the Chief Executive from a wide spectrum of the community.

113. The Independent Commission Against Corruption Complaints Committee - established in 1977 - monitors and reviews the handling by ICAC of complaints against ICAC. Again, this is an independent committee appointed by the Chief Executive. The Committee comprises mainly of members of the Executive and Legislative Councils and a representative of the Ombudsman. Persons with complaints against ICAC or its officers have direct access to the Committee as well as to ICAC itself. The investigation of such complaints is handled by a special unit of the ICAC Operations Department. When the unit has completed its investigation of a complaint, its conclusions and recommendations are submitted to the Committee for consideration.

114. Other disciplined services departments maintain clear guidelines and procedures for handling complaints. For example, the Correctional Services Department (CSD), which runs HKSAR's prisons, has a Complaints Investigation Unit to manage its internal grievance redress system for staff and prisoners. CSD staff and prisoners may also direct their complaints to the Ombudsman. The existing complaint channels are considered effective in view of the number and the nature of complaints handled.

115. The Immigration Department applies complaints procedures set out in the Immigration Service Standing Orders made by the Director of Immigration under the authority of the Immigration Service Ordinance. Complaints about abuse of authority or maltreatment by service members can be made to the Director of Immigration and are investigated promptly in accordance with the procedures in the Standing Orders. To ensure that all complaints are properly handled, a Complaints Review Working Party examines the results of investigations, conducts reviews and recommends follow-up action. Persons who consider that they have been improperly treated or that their cases have been mismanaged

also have access to the Ombudsman. If there is evidence that a member of the Immigration Service has committed a criminal offence, the Immigration Service will immediately report the matter to the police for further investigation. Disciplinary procedures against Immigration Service staff are also governed by the Immigration Service Ordinance and the Immigration Service Standing Orders. Under section 8 of the Immigration Service Ordinance, unlawful or unnecessary exercise of authority resulting in loss or injury to any person is a disciplinary offence.

IV. INFORMATION AND PUBLICITY

Promotion and public awareness of the human rights treaties

116. The Home Affairs Bureau of the HKSAR government is responsible for promoting public awareness of the rights and obligations stipulated in the human rights treaties applicable to the Region. Following the enactment of the BORO in 1991, the Committee on the Promotion of Civic Education (CPCE) under the Home Affairs Bureau established a Human Rights Education Subcommittee to promote public understanding of the BORO and respect for human rights as set out in the various treaties. Over the past six years, human rights has been one of the major emphases of CPCE's work. Recently, CPCE has increased its efforts to promote a public understanding of the Basic Law which provides the constitutional guarantees for human rights protection in the Region. At the central level, a Basic Law Promotion Steering Committee was established in January 1998 to guide promotional strategy.

Government publications

117. The Government of the People's Republic of China is responsible for preparing reports in respect of the HKSAR under various human rights treaties. Draft reports are prepared by the Home Affairs Bureau of the HKSAR government. The Bureau consults the Legislative Council and non-governmental organizations on the state of the implementation of these treaties in the Region. It addresses their views in the reports which it tables before the Legislative Council - and publishes in bound, bilingual format - after the Central Government has submitted them to the United Nations. Copies are deposited in public libraries and posted on the Internet for public inspection.

Reports of the HKSAR in the light of the ICCPR and the ICESCR

118. In November 1997, the Central Government announced that, in line with the Joint Declaration and the Basic Law, and considering that China was not yet a signatory to the two Covenants, it would make reference to the provisions of the two Covenants and transmit reports on the HKSAR to the United Nations. Thus the government of the HKSAR is responsible for preparing the reports on the Region in relation to the two Covenants for transmission to the United Nations.

- - - - -